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Protection of Basic Freedoms; Intimidation by Government

Contents in in this issue:

- “Protection of Our Basic Freedoms,” by U.S. Senator Edward V. Long,
- “Intimidation by Government.”

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Protection of Our Basic Freedoms

By U.S. Senator Edward V. Long

As a Senator, and especially as Chairman of the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, my first interest has been to preserve and expand the freedom and the rights of the individual. The primary goal of the National Dietary Foods Association is to promote better health for all Americans. It is one of the blessings, as well as one of the problems, of our modern society that both our primary interests have become thoroughly intertwined.

America and all aspects of American society have been growing at an ever-expanding rate. The problems that confront us today on every hand have grown more complex. Our capacity to solve such problems has also grown but, unfortunately, not at the same pace.

I do not intend, today, to mull over generally the problems of our complex society. I would, however, like to discuss one problem and one dilemma facing all of us today.

We are concerned about promoting better health for Americans. All of us are *also* concerned with preserving individual rights and individual freedom. For the preservation of our freedom we have created many institutions, yet the primary safeguard will always reside with alert and interested citizens. To promote better health, we have also created many institutions, one of these being the Federal Food and Drug Administration. Yet to a large extent, we must and should rely on individual initiative and discretion.

To make the Food and Drug Administration an effective agency of the people, we have had to bestow upon it very large powers. Yet today, because of a perverse idea of the public interest, the FDA is misusing these powers.

Very recently, in a court of law, an agent for the FDA, a man who is supposed to be a servant of the people, stated: “I wouldn’t hesitate to tell a lie if it would help the American consumer.”

To a man like me, to a man who has grown up in our American democracy, to a man who firmly believes in those principles of democracy and individual freedom that have made the United States the great nation that it is today, this thoughtless statement by an officer of the Food and Drug Administration cannot be less than horrifying and disgusting.

It is axiomatic that “protection of the consumer” is a worthy goal—but such protection is worthless if, in the process, the whole basis of the American governmental and political system is to be eroded and destroyed.

The employee of the FDA who made this statement is not alone. Many key employees and officials of FDA have exhibited over and over again that they have no true understanding of the American way of life and the American democracy—they have failed, over and over again, to see that as they trample individual liberties, they cannot possibly further even their own goal of protecting the consumer.

The Food and Drug Administration, as it was conceived years ago, had worthy goals. Unfortunately, the agency has not lived up to these goals. On the one hand, it has been virtually ineffective in controlling large manufacturers and powerful interests; on the other, it has ruthlessly persecuted many small manufacturers and relatively weak groups of people.

In pursuing the health of Americans, the Food and Drug Administration is today undermining the health of America.

Three of our most basic God-given rights are embodied in the Bill of Rights. These rights are stated in the First, Fourth, and Fifth Amendments of the Constitution.

The First Amendment, in part, states that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press.

The Fourth Amendment guarantees for all Americans the security of themselves and their possessions from unreasonable and illegal searches and seizures.

The Fifth Amendment guarantees that no person shall be deprived of his life, liberty, or property without due process of law, and that no person shall be forced to testify against himself.

During the investigations and hearings held by my Senate subcommittee, we were dismayed and sickened to learn that the Food and Drug Administration has violated each and every one of these basic rights. Under the pretext of so-called “consumer interest,” the FDA has not hesitated to broach man’s basic American freedoms.

A couple of years ago, in Kansas City, eight FDA inspectors made secret tape recordings of the conversations of two unsuspecting and innocent school teachers just because they were (thought to be) attempting to demonstrate a new milk substitute, Allerjoy, in a supermarket. In a ruthless effort to convict, at any cost, these school teachers and the manufacturers of Allerjoy, FDA agents repeatedly committed perjury in a court of law. But even these FDA efforts were to no avail—the innocent school teachers and the small manufacturers were acquitted.

But the FDA did not stop even there. In an unconscionable effort to “get even” with these people for having had the spirit and fortitude to defend themselves, FDA agents continued to unreasonably harass these manufacturers in their Los Angeles plant.

If secret recordings are not successful in indirectly suppressing the freedom to express ideas contrary to the FDA “line,” then the FDA has not hesitated to go further. For example, when the FDA decided it did not agree with Paul C. Bragg’s book on proper breathing, the agency, in a sudden raid, seized and impounded all of Bragg’s books. To me, this does not look too far removed from the Nazi book burning of the 1930s or Communist suppression of many writings today.

Even freedom of religion is not entirely safe from the Food and Drug Administration. Not too long ago, after a long period of continual attempts to suppress the publications of a small church in Washington—the Church of Scientology—one day FDA agents staged a raid on the Founding Church, seized properly, and harassed officers and communicants of the church. This is an outrage that should not be tolerated in our nation.

Just as the FDA agent stated that he would not hesitate to lie before a court of law, as he put it, “to protect the consumer,” so it seems that the Food and Drug Administration would not hesitate to stretch the truth when reporting to the United States Congress.

A few years ago, after the exposure of unwarranted, unreasonable and illegal uses of secret recordings made by FDA agents during factory inspections, the Food and Drug Administration solemnly assured Congress that it would no longer make such recordings.

Evidence presented before my Senate subcommittee makes it clear that the FDA has violated the spirit, if not the letter, of this promise.

The FDA seems to believe that every American rigidly adheres to a hypothetical “average man’s diet.” As a corollary to this asinine assumption, it is equally rigidly opposed to the use of most dietary supplements and health foods.

In effect, the FDA seems to have failed to consider that the so-called “average man” does not exist, or do they consider that many such average men could not afford the “average diet,” and many who can afford it do not wish to eat it. We all have our individual differences, and we all want and have a right to preserve our individuality.

Furthermore, in maintaining its rigid opposition to dietary supplements and health foods, the FDA is rejecting the advice that a vast number of qualified doctors give to their individual patients.

Freedom of choice, and its accompanying diversity, are two cornerstones of the American way of life. So long as dietary supplements or health foods do not directly harm personal health, the FDA has no right to dictate to the American people what they can eat and what they cannot eat.

As Judge Choate of a Federal district court in Florida has so firmly stated:

> “The provisions of the Federal Food, Drug, and Cosmetic Act did not vest in the Food and Drug Administration or any other Federal agency the power to determine what foods should be included in the American diet; this is the function of the marketplace.”

Of course, it must be recognized that the Food, Drug, and Cosmetic Act is grounded on a most essential idea—the protection of consumers from many potentially dangerous and harmful unknown products. Furthermore, an agency like the Food and Drug Administration is necessary in order to effectively carry out this goal of the Act.

What, then, has gone wrong? Basically, the problem with the FDA today seems to be a problem that can occur in any agency of the Government. To make the FDA an effective agency, we have had to give it power, but we have failed to make sure that the agency does not use this power perversely. We have forgotten the old adage about “power corrupts.”

In the case of the FDA, we have allowed it to supply its own definition of “protection of the consumer.” Unfortunately, the FDA has defined “consumer protection” in such a way that it has grossly overstepped its bounds, and in the process, it has tended to destroy the rights of consumers, and the rights of all Americans to choose even so personal a thing as what they should eat, as well as the more basic political rights of freedom from illegal search and seizure, freedom of religion, and freedom of speech.

And this problem is not limited to the Food and Drug Administration. In the course of Senate hearings and investigations, we have discovered numerous invasions of individual privacy and violations of individual freedom by many Government agencies.

What, then, can we do about these wayward Government agencies who should and do make vital contributions to the welfare of American citizens, but who, in the process, tend at the same time to destroy the rights of these same American citizens?

Legislation is one means. For example, our subcommittee is in the process of conducting hearings and investigations that will lead to legislation preventing agencies of the Federal Government from using eavesdropping and wiretapping devices, which infringe on individual privacy and individual freedom.

The ultimate solution, however, lies with the American people. Only unrelenting vigilance by all Americans can preserve American democratic ideals, American freedom, and our God-given individual rights.

—Address by United States Senator Edward V. Long (D. -MO), National Dietary Foods Association Annual Convention, Commodore Hotel, New York, NY, August 2, 1965.

Intimidation by Government

Many Americans are disturbed, others downright alarmed, over the growing interference of the government in their lives. This uneasiness was brought to the surface with startling force by a *Parade* report (February 20) on intimidation by government. The article told how public servants sometimes use their power to harass citizens who differ with Washington.

From across the country poured expressions of concern. Most simply thanked *Parade* for standing up to the government. But hundreds wrote about their own experiences. Several declared bitterly that their faith in the country had been shaken. One said he had been driven to the brink of suicide by government hounding. Another swore he was ready to renounce his citizenship, another that he was pulling up stakes to move to Canada. Some included documentary evidence to back up their stories.

Up Against Goliath

In any dispute with the federal government, the private citizen is up against a Goliath. He must rely pretty much upon the fairness of the public servants, who are supposed to seek justice. It is heartening how many of them do. But others don’t seem to understand the difference between “prosecute” and “persecute.” And letters to *Parade* show that this has caused bitterness against government.

“To win their way, the bureaucrats use intimidation, threats and blackmail. There is small limit to their power, and they use it to the utmost.”

One solution: an “ombudsman,” who, in Sweden, has the power to investigate complaints made by private citizens and prosecute public officials found to be dealing unfairly with the public.

Certainly, *Parade’s* mail reveals a malaise that demands the urgent attention of our government leaders.

—Reported in *Parade,* May 15, 1966

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